

**THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA, STATES
OF CALIFORNIA, COLORADO,
CONNECTICUT, DELAWARE, FLORIDA,
GEORGIA, HAWAII, ILLINOIS, INDIANA,
IOWA, LOUISIANA, MICHIGAN,
MINNESOTA, MONTANA, NEVADA, NEW
JERSEY, NEW MEXICO, NEW YORK,
NORTH CAROLINA, OKLAHOMA, RHODE
ISLAND, TENNESSEE, TEXAS, VERMONT,
AND WASHINGTON; THE
COMMONWEALTHS OF
MASSACHUSETTS AND VIRGINIA; and
THE DISTRICT OF COLUMBIA,

ex rel. ZACHARY SILBERSHER,

Plaintiffs,

vs.

JANSSEN BIOTECH, INC., JANSSEN
ONCOLOGY, INC., JANSSEN RESEARCH &
DEVELOPMENT, LLC, and JOHNSON &
JOHNSON,

Defendants.

Civil Action No. 19-12107 (MEF) (SDA)

ORDER

THIS MATTER having been brought before the Court on the Notice of Objections to the Special Master’s Order and Renewed Motion for In Camera Review of documents Not Subject to Privilege Pursuant to the Crime-Fraud Exception filed by Relator Zachary Silbersher (“Relator”) on October 25, 2024 [ECF No. 393] (the “Motion”); and Defendants Janssen Biotech, Inc., Janssen Oncology, Inc., Janssen Research & Development and Johnson & Johnson (collectively, “Defendants”) having filed an opposition to the Motion on November 19, 2024 [ECF. No. 413]; and

WHEREAS, on March 18, 2024, this Court entered an Order appointing Douglas Arpert, U.S.M.J. (Ret.) as Special Master in this matter pursuant to Fed. R. Civ. P. 53(a)(1)(C) [ECF No. 331] pursuant to which Judge Arpert was tasked with, *inter alia*, overseeing the schedule for

completion of discovery and “all discovery disputes and motions related thereto”; and

WHEREAS, Relator filed a motion for an *in camera* review of certain documents withheld or redacted by Defendants under the attorney-client privilege and/or work production doctrines on the grounds that these documents fall within the crime-fraud exception [ECF Nos. 345, 346], which was duly opposed by Defendants [ECF Nos. 354, 355]; and

WHEREAS, the Special Master entered an Order on October 4, 2024 denying Relator’s motion [ECF No. 374]; and

WHEREAS, Relator now appeals this decision to the undersigned [ECF No. 393] and has identified 50 documents (of the more than 900 at issue in the original motion) for priority review to determine whether the crime-fraud exception applies; and

WHEREAS, the Court having reviewed the briefs and other supporting documents submitted by the parties in support of and in opposition to the motion, and the Court having opted to decide this motion without oral argument pursuant to Fed. R. Civ. P. 78; and for good cause shown:

IT IS, on this **10th** day of **December, 2024**, hereby **ORDERED**

1. The Special Master is directed to conduct an *in camera* review of the 50 documents designated by the Relator for priority review to determine whether the crime-fraud exception applies, and to then make a determination as to whether the remaining documents need to be reviewed and whether his original Order stands. Relator’s Motion is dismissed without prejudice. The clerk is directed to terminate the motion at ECF No. 393.

/s/ Stacey D. Adams
Stacey D. Adams
United States Magistrate Judge